

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

**BRIAN DOUGLAS ANTHONY,**  
**Plaintiff,**

V.

**A.D.A. MICHAEL BURNS, et al.,  
Defendants.**

**C.A. No. 20-164 Erie**

**District Judge Susan Paradise Baxter**  
**Magistrate Judge Richard A. Lanzillo**

# MEMORANDUM ORDER

Plaintiff Brian Douglas Anthony, an inmate at the Erie County Prison in Erie, Pennsylvania, commenced this action by filing a *pro se* civil rights complaint accompanied by a motion for leave to proceed *in forma pauperis* (“ifp motion”) [ECF No. 1], on June 26, 2020. Named as Defendants in the complaint are Erie County Assistant District Attorneys Michael Burns (“Burns”), Justin Smith (“Smith”), and Grant Miller (“Miller”); Honorable Marshall J. Piccinini of the Erie County Court of Common Pleas (“Judge Piccinini”); the Commonwealth of Pennsylvania (“Commonwealth”); the City of Erie, Pennsylvania (“Erie”); and Plaintiff’s criminal defense attorney Michael Harmon, Esquire (“Harmon”). This matter was referred to United States Magistrate Judge Richard A. Lanzillo for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

On April 8, 2021, Magistrate Judge Lanzillo issued a report and recommendation (“R&R”) recommending that Plaintiff’s ifp motion be granted and that this action be dismissed as legally frivolous in accordance with 28 U.S.C. § 1915(e) [ECF No. 4]. In particular, Judge

Lanzillo determined that (1) Defendant Harmon is not a state actor and, thus, is not subject to suit under 42 U.S.C. § 1983; (2) Plaintiff's claims against Defendants Burns, Smith and Miller are barred by the doctrine of absolute prosecutorial immunity; (3) Plaintiff's claims against Defendant Judge Piccinini are barred by the doctrine of judicial immunity; (4) Plaintiff's claims against Defendant Commonwealth are barred by Eleventh Amendment immunity; and (5) Plaintiff's claims against Defendant Erie fail to state a claim of municipal liability under Monell v. New York City Dept. of Soc. Servs., 436 U.S. 658 (1978). Plaintiff has since filed timely objections to the R&R essentially reiterating the bases of his claims against Defendant Piccinini and the ADA Defendants, which have already been addressed by Judge Lanzillo in the R&R [ECF No. 10].

After de novo review of the complaint, together with the report and recommendation, the following order is entered:

AND NOW, this 28th day of April, 2021;

IT IS HEREBY ORDERED that the report and recommendation of Magistrate Judge Lanzillo, issued April 8, 2020 [ECF No. 3], is adopted as the opinion of the Court, and this case is DISMISSED as frivolous pursuant to 28 U.S.C. § 1915(e). The Clerk is directed to mark this case CLOSED,

  
SUSAN PARADISE BAXTER  
United States District Judge

cc: The Honorable Richard A. Lanzillo  
U.S. Magistrate Judge

all parties of record